

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

IN RE

**JAMES MAULKMUS McMILLAN
d/b/a J. McMILLAN AND COMPANY and
CAROL ANN McMILLAN,
Debtors.**

Case No.: 09-30986

Chapter 7

BUFFALO CONSTRUCTION, INC.
Plaintiff,

VS.

Adv. Proc. No. 09-3073

**JAMES MAULKMUS McMILLAN
d/b/a J. McMILLAN AND COMPANY and
CAROL ANN McMILLAN,
Defendants.**

RESPONSE TO APPLICATION FOR ENTRY OF DEFAULT

Come now the Defendants, by counsel, and files the following response to the Application for Entry of Default:

1. Counsel for the debtors makes a limited appearance and does not waive any procedural or jurisdictional defenses as may be raised under the law.
2. The Complaint and Summons were served only on the Defendants in this case, and were not served pursuant to the Rule 7004(g) on counsel for the debtors under this Chapter 7 case.
3. Based upon the failure of required service, the Court should deny the request for Entry of Default.
4. That the Defendants have such other and further relief to which they may be entitled.

WHEREFORE the Defendants, pursuant to the limited appearance by counsel for the debtors, request that the Court deny the Application for Entry of Default for the reasons stated above.

Dated this 8th day of October, 2009.

/s/ John P. Newton, 010817
/s/ Richard M. Mayer, #5534
Law Offices of MAYER & NEWTON
Attorneys for Defendants
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Response** has been served either electronically (ECF) or by placing in the United States First Class Mail (USM) with sufficient postage to insure delivery:

U. S. Trustee (Via ECF)

D. Scott Hurley (Via ECF)
Attorney for Plaintiff
P. O. Box 682
Knoxville, TN 37901

Dated: October 8th, 2009.

/s/ Richard M. Mayer, #5534
/s/ John P. Newton, Jr., 010817
Law Office of MAYER & NEWTON
Attorneys for Defendants